

NUS ADVANCED CRIMINAL LEGAL PROCESS COURSE 2017

NUS Faculty of Law

Guest Lecture Session on 6 April 2017

Technology has changed the practice of law tremendously since the time I was your age. More changes will take place by the time you are admitted to the Bar. The one aspect of law practice that will not change much is advocacy. Why? Because advocacy is not yet something a machine can do well. Maybe one day it might but until then, advocacy remains a craftsman's craft; and it is a complex craft. By the way, 'advocacy' is pronounced 'ad- ve-cacy', not 'ad-VOR-cacy.

Advocacy skills are not difficult to learn but not easy to master. Time is of the essence. There is much to learn, and much practice will be. If you slacken, you will very soon find that half a decade had passed you by. The good news is that almost everything is in your own hands – if you have the drive, the patience, the perseverance to succeed.

Only the choice of a good master may be out of your hands – but not entirely. Remember, advocacy is a craft, and every craftsman begins as an apprentice; and every apprentice ought to have a good master.

I was lucky. I had a near-perfect master. What if you don't have a good master? Well, don't sit around and warm your backside. Go and look for one. And when you find him (or her), listen to every word he tells you. Then go and put his advice into practice. Again and again.

In truth, I had not just one master, I had many. Oliver Wendell Holmes Jr and Benjamin Cardozo were among them, but only one, Howard Edmund Cashin, was interactive. I read every word they wrote. I read them again and again and put them into practice.

To understand advocacy you must realise that this craft has a long history. It goes back centuries to ancient Greece; to a time where orators and storytellers enthrall their audience with their oratory and stories. It was a time before the printed word. To keep the audience awake, the orators know that not only must their story be good, the storyteller must also be good. In court, an experienced counsel will also make sure that his witnesses perform well in helping

him unfold the narrative. It remains the counsel's job of pulling the parts together into a persuasive whole. But this is not advice to coach your witnesses to say things that are not true.

I am emphasising that a fastidious preparation of one's case right from the outset, and that requires counsel to know exactly what his witnesses will say. And he must also know how they will say it so that he can best prepare his oratory for the final speech before the court.

I think that a good advocate is like a hypnotist. A hypnotist cannot mesmerise his subject by shouting "LOOK INTO MY EYES YOU BLOODY IDIOT". He speaks in a soft, calm voice, "Look into my eyes. Look deep into my eyes. Look gently into my eyes. Do you see anything that meets your approval? Do you see a mirror image of yourself? Do you see the eloquent advocate that you are going to be?" Nowadays, advocates think that they have to pummel their witnesses into submission. That is wrong. It is true that sometimes you do need to intimidate the witness. But not by shouting; not by manifest aggression. There is no need for that.

You can say calmly, but firmly, to a reluctant witness, "Mr Wong, you're not answering my question. If you don't, I will keep you there until you do or until it becomes clear to the court that you are not willing to tell us what you know. So let me ask you one more time ..."

These are the refined bits that you will learn. I have said that this is a complex art. You need to empower yourself to acquire the specific skills by understanding human behaviour, and you must be men and women of the world so that you will not mislead yourselves with hare brained ideas and unrealistic expectations. And you must, above all, be a master of language, for the advocate must also a wordsmith. He who is often at a loss for words will win few cases. The technician repeats the mundane. It is not enough just to say in mitigation of your client that he has two young children – many accused persons have two young children. The thoughtful professional might say, 'Your Honour, the accused has two children who are at an age in which the presence of a father is so important them. The accused realises this, if not before, he does now. He is prepared for punishment but hopes that the hardship on his children will be softened.'

A wordsmith is not wordy. He disdains verbiage. The advocate's craft requires him to be precise, and that means he must not say anything less than he should nor anything more. He should not disgorge information 'just to be complete'. Dumping information can be done by any clerk. A closing speech or final submission is not a bundle of information punctuated by a declaration that the opponent's case is thus flawed and the court's finding ought to be this or that. The professional chooses what he needs and wraps it in a clear persuasive argument. He must craft a speech with the view that by the time he takes his seat the court can't wait to give judgment in his client's favour.

It should now be obvious to you that a good advocate practices charm. He entices his audience, not just by words, but also a sober, if not a pleasant disposition for he knows that honeyed words cannot flow from a poisonous tongue. He is not obsequious nor wears a plastic smile.

I mentioned that this is a complex craft. In addition to what I have just said, the advocate must understand the trial process because that sets the context and environment in which he plies his craft. Learning about the trial process is connected to the skills of oratory and examining witnesses. In our jurisdiction, the advocate is often also the solicitor. That means that he also needs the skills of engaging his clients and their witnesses. All this requires patience but hard work. That is why the practice of law is also described as a 'discipline'.

Addendum:

The advocate in Singapore is expected to master the following specific areas (set out in point form below):

1. Accepting the brief. Here he must learn how to accept a client. You will be surprised how quickly a client loses confidence in his lawyer at the very first meeting. In this area, the lawyer must also learn about the ethics of accepting a client. He must learn how to set up meetings and follow through with them. Technology also brings new practices into focus – how can you stop your client from WhatsApping you every five minutes?

2. Formulating the cause of action/defence and settle pleadings. Here he must appreciate the importance of the letter-before-action and how to draft that as well. He must be know the difference between privileged and non-privileged communication. He must bear in mind that the letter-before-action (and not the writ) is the first shot to be fired. But the pleadings are also important. Learn to make your client a small target.

3. Meander through the interlocutory proceedings deftly ensuring that every interlocutory step advances your client's case. Every one. To reach the crescendo or climax of the action you should not falter.

4. Finally, a couple of months before the trial, he must do his 'getting-up'. He cannot wait till the week before; let alone the day before. No actor goes on the big stage without rehearsal. Advocacy is a performing art. And a well-practised bit actor can still the limelight from the unprepared star.

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6 April 2017